



**STATEMENT OF
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“FOREIGN VESSEL OPERATIONS ON THE U. S. OUTER CONTINENTAL SHELF”

**BEFORE THE
HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**

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INTRODUCTION

Good morning Mr. Chairman and distinguished members of the committee. I appreciate the chance to appear before you, to discuss issues related to foreign vessel operations on the U.S. Outer Continental Shelf (OCS) involving the exploration and exploitation of mineral resources.

In my role as Coast Guard Director of Prevention Policy, one of my primary responsibilities is to oversee the compliance of vessel, offshore facility, and mobile offshore drilling units with all applicable U.S. and International laws, regulations, and policies.

ROLE/RESPONSIBILITY ON THE U.S. OUTER CONTINENTAL SHELF

In accordance with the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. § 1331 et. seq., and numerous Memoranda of Understanding and Agreement with the Minerals Management Service (MMS) and the Occupational Safety and Health Administration (OSHA), the Coast Guard promulgates and enforces safety and security regulations governing vessels—including facilities, fixed and floating production platforms, and Mobile Offshore Drilling Units (MODUs) when operating as vessels—on the U.S. Outer Continental Shelf (OCS). With regard to MODUs specifically, the Coast Guard is responsible for inspection of the MODU’s hull structure, electrical system safety, lifesaving and fire fighting systems and equipment, and for verifying the unit’s crew is capable of conducting satisfactory abandon ship (unit) and fire drills. MMS is responsible for the inspection and testing of the production and drilling systems and production operations of the MODU from the unit’s drill floor to the subsea well.

In carrying out these responsibilities, the Coast Guard cooperates with numerous agencies such as the Customs and Border Protection (CBP), Maritime Administration (MARAD), Environmental Protection Agency (EPA), MMS, OSHA, etc., as well as industry partners in order to enhance the safety and security of the maritime industry on the OCS.

The Coast Guard, consistent with its statutory authority:

- Conducts annual safety and security inspections of all U.S. and foreign flagged fixed or floating production platforms, MODUs, and vessels operating on the OCS;

- Promulgates and enforces regulations and may modify any regulation, interim or final, applying to hazardous working conditions related to activities on the OCS, and promulgates other regulations as may be necessary to promote the safety and security of life and property on the OCS;
- In conjunction with MMS, promulgates and enforces regulations to provide for scheduled onsite inspections, at least once a year, of each facility on the OCS that is subject to any environmental, safety or health regulation promulgated by the Coast Guard pursuant to OCSLA, and also provides for periodic onsite inspection without advance notice to the operator of such facility to assure compliance with environmental, health or safety regulations;
- Reviews any allegation from any person of the existence of a violation of a safety or health regulation or other unsafe working condition on the OCS;
- Investigates and makes a public report on any death or serious injury occurring as a result of operations conducted pursuant to OCSLA, and may investigate and report on other injuries, casualties or accidents; and,
- Initiates appropriate civil and criminal procedures and other action to enforce any provision of the OCSLA or any regulation issued under this Act.

FOREIGN OPERATIONS ON THE U.S. OCS

Foreign vessels, foreign floating production units, and foreign MODUs are permitted, and carryout operations on the U.S. OCS related to the exploration and exploitation of mineral resources. However, there are numerous restrictions on their operations.

The “Jones Act” 46 U.S.C. § 55102 restricts foreign vessels from transporting cargo between points in the U.S., including those on the U.S. OCS. CBP, the Coast Guard and MARAD have a memorandum of understanding (MOU) to cooperate in the enforcement of this restriction. Foreign floating production units and MODUs are also restricted from operating on the U.S. OCS without a valid Coast Guard Certificate of Compliance (COC). In order to maintain a valid COC these entities must undergo a Coast Guard safety and security examination annually. Each foreign vessel involved in OCS activities is also required to undergo a satisfactory Coast Guard Port State Control examination once the vessel enters within 12 nautical miles of the U.S. coast line.

FOREIGN EMPLOYMENT EXEMPTIONS

The authority to grant exemptions from the congressionally mandated employment restrictions on the U.S. OCS is found in the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. § 1331 et. seq. The Coast Guard has promulgated implementing regulations in 33 CFR, Part 141 to enforce the applicable sections of OCSLA. The Coast Guard has also issued policy guidance in the form of a Navigation and Vessel Inspection Circular (NVIC 7-84) entitled, “OCS Citizenship Requirements; Exemptions from” to assist the public in submitting these employment requests.

These regulations require, in essence, that all employers of personnel on any unit engaged in OCS activities must hire U.S. citizens or resident aliens. The regulations do, however, provide for exceptions known as “exemptions.” The Coast Guard is therefore authorized to permit a foreign OCS unit (e.g. a vessel or offshore drill platform) to operate on the U.S. OCS without employing U.S. workers, and to permit an employer (e.g. a U.S. employer) to hire foreign workers to fill positions on units operating on the U.S. OCS. In the first instance, if it is demonstrated to the Coast Guard that an OCS unit is either 50 percent or more foreign-owned or foreign-controlled, then 33 CFR Part 141 does not apply to that OCS unit and a letter is issued by the Coast Guard stating so. Where, however, the regulations do apply, an employer must demonstrate that there is not a sufficient number of U.S. citizens or resident aliens “qualified and available” to fill the positions on the OCS unit owned or operated by the employer seeking the exemption.

NVIC (7-84) provides, in greater detail, the supporting documentation the Coast Guard needs to process a request from an employer seeking an exemption from the regulations that mandate the hiring of a “qualified and available” U.S. workforce. This type of exemption requires the employer to provide, for example, documentation demonstrating the employer advertised for the positions sought to be filled and interviewed applicants, and also describes efforts made to train and promote U.S. citizens from their existing workforce.

The Coast Guard will also, by regulation, coordinate with the U.S. Department of Labor (DOL) to determine whether the documentation provided supports an advisory finding that there are no “qualified” U.S. citizens or resident legal aliens “available” to fill the positions identified by the employer. Once DOL provides a favorable advisory determination based on that the submitted documents which support the request to hire foreign labor, that the Coast Guard will issue an exemption letter. These letters are valid for one year, which means an employer must re-submit documentation to demonstrate a need to hire foreign workers every 12 months.

FOREIGN VESSELS INVOLVED IN DEEPWATER HORIZON SPILL RESPONSE

There are approximately 200 vessels assisting in the DEEPWATER HORIZON Source control activities in the vicinity of the well. This includes a wide range of U.S. vessels and 14 foreign vessels either engaged or contracted to engage, in the spill response. Examples of the work being carried out by these foreign vessels include:

- The Norwegian flagged subsea construction vessels VIKING POSEIDON, SKANDI NEPTUNE, OCEAN INTERVENTION III, and the Spanish flagged BOA DEEP C have been conducting the subsea equipment management, including the Remote Operating Vessel video footage.
- The foreign drillship DISCOVERER ENTERPRISE, a Marshall Islands flagged vessel, has been the primary drill ship recovering the oily water flowing from the damaged well since spill response operations began. The Liberian flagged TOISA PISCES and Great Britain flagged LOCH RANNOCH are currently making preparations to assist in the recovery operations. These two vessels have been hired because of the unique characteristics they possess, specifically their dynamic positioning systems, which will enable them to remain on station to conduct response operations, yet be rapidly able to cease operations and move to safety in the event of a hurricane.

- The MODUs DEVELOPMENT DRILLER II and DEVELOPMENT DRILLER III, both Vanuatu flagged, are carrying out the relief well drilling operations for the damaged well. These foreign vessels undergo Coast Guard examinations prior to operating.

U.S. FLAGGED VESSELS VS FOREIGN FLAGGED VESSELS EXAMINATIONS

The primary difference between Coast Guard inspections of a U.S. flagged vessel versus a foreign flagged vessel, including MODUs, is that: for U.S. flagged vessels, the Coast Guard is responsible for carrying out the inspections, tests and surveys required to issue the statutory certificate; and for foreign vessels, the flag State or Recognized Organization (RO), working on behalf of the flag State is responsible for carrying out the inspections, tests and surveys required to issue the statutory certificates.

For U.S. flagged vessels, as authorized by 46 U.S.C. § 3316, the Coast Guard may accept certain flag State statutory certificates issued to vessels by authorized classification societies or ROs, such as the American Bureau of Shipping (ABS). The Coast Guard reserves the responsibility for issuing the Certificate of Inspection (COI). However, a RO may participate in the plan review and inspections necessary for issuance of this certificate. Whenever the Coast Guard allows an RO to perform any flag State duties on its behalf, the Coast Guard involvement consists primarily of liaison with the RO, policy determinations and oversight with respect to work the Coast Guard delegates to class societies pursuant to 46 U.S.C. § 3316, and work that the Coast Guard accepts pursuant to its authority under the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 et. seq.

Statutory certificates are issued by the flag State to document that the vessel meets the requirements of domestic and international standards pertaining to the relevant convention. Statutory certificates, such as the Coast Guard issued COI, allow a U.S. vessel to operate. International statutory certificates, like the MODU Safety Certificate, demonstrate that the MODU meets the statutory requirements of the International Maritime Organization (IMO) MODU Code.

The Coast Guard does not perform flag State level inspections on foreign flagged vessels if the vessel's flag State has an inspection and certification program with equivalent standards of that maintained by the U.S., or if the flag State performs the necessary work to issue all of the applicable IMO Convention certificates to the vessel. The United States is signatory to these IMO Conventions and recognizes the flag State involvement through Port State Control (PSC); this is written in law (see 46 U.S.C. §§ 3303, 3505 and 3711 and 43 U.S.C. § 1348). In these instances, the Coast Guard will conduct Port State Control examinations on the foreign freight vessel, foreign passenger vessel, foreign tank vessel, and/or foreign MODU to verify compliance with domestic laws, regulations and International Conventions. PSC examinations satisfy these statutory examination requirements.

PSC provides an examination of sufficient breadth and depth to indicate that a vessel's major systems are in compliance with applicable international standards and domestic requirements, and the crew training and performance, such as lifesaving and firefighting drills, meet the relevant standards.

The scope of Coast Guard PSC examination for all of these vessels exceeds current international guidelines for PSC. Coast Guard PSC examinations include inspection and equipment tests and emergency drill requirements far beyond those required by other PSC regimes. The Coast Guard never delegates PSC responsibilities to an RO. Through the PSC program, the Coast Guard ensures the foreign flag safety regime is equivalent to that of the U.S. flag.

When a PSC examination reveals questionable equipment, systems, or crew competency issues, the Coast Guard expands the exam as necessary to determine whether a deficiency exists. The scope of the expanded exam is not limited, and the inspector may require additional tests, inspections, or crew drills to the extent deemed necessary to determine whether or not a deficiency exists. When deficiencies exist, the Coast Guard documents these deficiencies on a “PSC Report of Inspections and/or Deficiencies” (Form CG-5437 A/B), and mandates correction of the deficiencies. Depending on the severity of the deficiencies, the Coast Guard may detain a vessel or curtail vessel operations as appropriate until the deficiencies are corrected.

The Coast Guard issues a Certificate of Compliance (COC) to Gas and Chemical Carriers, Oil Tankers, Passenger Ships, and MODUs after a satisfactory PSC examination. A COC documents that a foreign vessel has been examined by the Coast Guard and it meets the regulatory requirements to operate in U.S. waters, including the U.S. OCS.

NOTICE OF ARRIVAL INFORMATION

Current regulations found in 33 CFR 146.202 require all MODU owners/operators preparing to operate on the U.S. OCS to provide 14 day Notice of Arrival (NOA) to the Coast Guard District Commander for the area on the U.S. OCS on which the unit will operate. This NOA information must include the location and date OCS operations are expected to commence, and their anticipated duration. These regulations also require the MODU owner/operator to notify the District Commander before relocating the unit.

On June 22, 2009, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled “Notice of Arrival on the Outer Continental Shelf” in the Federal Register (74 FR 29439). The rule, as proposed, would increase overall maritime domain safety and security awareness by requiring NOA information for all foreign vessels, floating facilities, and MODUs arriving on, and engaging in, OCS activities. The rule also proposed to require NOA submission for all movements between lease blocks on the U.S. OCS. The Coast Guard is working to finalize this rule as soon as possible.

LONG RANGE IDENTIFICATION AND TRACKING

Using satellite technology, the Long Range Identification and Tracking (LRIT) system tracks the positions of all vessels subject to the International Convention for the Safety of Life at Sea (SOLAS) regulation. Vessels on international voyages subject to the rule include cargo ships of 300 gross tons and greater, passenger vessels carrying more than 12 passengers, and all self-propelled MODUs.

This international system is designed to allow SOLAS Contracting Governments access to flag, port, and coastal state LRIT information. The United States receives worldwide tracking information from all U.S. flagged SOLAS vessels, and all foreign flagged SOLAS vessels inbound to U.S. ports. The U.S. also has access to LRIT information from foreign flagged vessels transiting within 1,000 nautical miles of the U.S. coast. The worldwide LRIT system became operational on December 31, 2008.

AUTOMATIC IDENTIFICATION SYSTEM CARRIAGE REQUIREMENTS

SOLAS requires Automatic Identification Systems (AIS) to be fitted aboard ships operating on an international voyage, including the U.S. OCS, to include all vessels of 300 gross tons or more, all passenger ships regardless of size, all cargo ships of 500 gross tons or more on any voyage, and all self-propelled MODUs. The current domestic AIS requirements found in 33 CFR 164.46 apply to the navigable waters of the U.S. (out to 12 nautical miles from U.S. coastline). It is estimated that more than 40,000 ships operating world-wide currently carry AIS class A equipment.

At any given time, depending on OCS activity, there are 4,000 or more facilities, fixed and floating production platforms, and MODUs operating on the U.S. OCS. All of the fixed production platforms (approximately 3,800) are U.S. The majority of the floating facilities, floating production platforms, and MODUs are foreign flagged.

Thank you again for the opportunity to testify today. I am happy to answer any questions you may have.